

No. 19-10011

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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TEXAS, *et al.*,  
*Plaintiffs-Appellees*,

v.

UNITED STATES, *et al.*,  
*Defendants-Appellants*.

THE STATES OF CALIFORNIA, *et al.*,  
*Intervenors-Defendants-Appellants*.

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**On Appeal from the United States District Court  
for the Northern District of Texas**

No. 4:18-cv-167-O

Hon. Reed O'Connor, Judge

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**STATE DEFENDANTS' REPLY IN SUPPORT OF MOTION TO EXPEDITE**

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February 14, 2019

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On February 1, 2019, the State Defendants moved to expedite this appeal, set a proposed briefing schedule, and set this case for oral argument as soon as practicable upon the completion of briefing. Under the proposed schedule, the opening briefs would be due March 29; the answering briefs, May 1; and the reply briefs, May 21. *See* Mot. to Expedite 4. The State Defendants also asked the Court to give this case calendaring priority for oral argument. *Id.* In response, the Federal Defendants did not object to the proposed schedule and asked that the Court schedule the case for oral argument during the week of July 8. *Id.* at 4-5. The Plaintiffs opposed the motion, arguing primarily that it might hamper their ability to seek an extension of time. *See* Opp. 3-4.<sup>1</sup>

After the motion and opposition were filed, the Clerk certified that the record in this case was complete for purposes of appeal, and set the date due for opening briefs as March 25, 2019, in the ordinary course. *See* Doc. No. 00514832122 (Filed Feb. 12, 2019). Under that schedule, the Plaintiffs' answering brief would be due April 24; and reply briefs would be due May 15.

The State Defendants are amenable to either briefing schedule. All parties agree that this is a case of "enormous national consequence." Opp. 1. A prompt

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<sup>1</sup> Proposed Intervenor the U.S. House of Representatives and the States of Colorado, Iowa, Michigan, and Nevada consented to the State Defendants' motion. *See* Mot. to Expedite 5.

resolution of this appeal would thus benefit both the parties and the country. *See* Mot. to Expedite 2-4 (documenting uncertainty created by the decision below). Either schedule strikes a reasonable balance between that strong interest in prompt resolution and the need to provide the Court with briefs that fully address the important issues presented. *See* Opp. 3, 4.

The State Defendants do continue to request that the Court adopt one schedule or the other in a special order and give the case calendaring priority. The practical effect of doing so would be to prevent any party from seeking an extension of time, except perhaps under truly compelling circumstances.<sup>2</sup> But this is not a typical appeal, and briefing should not be delayed for the typical reasons attorneys seek extensions of time. *See* Opp. 4 (expressing concern about potential competing time demands). In any event, even in ordinary cases this Court normally “expects briefs to be filed timely and without extensions” and directs that such requests “be made sparingly.” 5th Cir. R. 31.4.1.

Either briefing schedule would also allow the Court to accommodate the Federal Defendants’ request to set this case for oral argument during its hearings

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<sup>2</sup> Rather than being “lopsided,” Opp. 4, the briefing schedule proposed by the State Defendants would afford the Plaintiffs more time to file their answering brief (33 days) than they would have under the schedule just set in the normal course. *See* Fed. R. App. P. 31(a) (answering briefs are due 30 days after opening briefs are filed).

set for the week of July 8, 2019. *See* Mot. to Expedite 4-5. Although the Plaintiffs oppose the specific request to hear this appeal during that week, they do not appear to oppose the State Defendants' request to give this case calendaring priority.

Accordingly, under any circumstances, and in light of the significance of this case, the Court should set the case for oral argument as soon as practicable upon the completion of briefing.

## CONCLUSION

The Court should set a specific briefing schedule for this case and set the case for oral argument as soon as practicable upon the completion of briefing.

Dated: February 14, 2019

Respectfully submitted,

*s/ Samuel P. Siegel*

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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the requirements of Federal Rule of Appellate Procedure 27(d)(2) and Fifth Circuit Rule 27.4, because it contains 604 words, according to the count of Microsoft Word. I further certify that this brief complies with typeface requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in 14-point Times New Roman font.

Dated: February 14, 2019

*/s Samuel P. Siegel*

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Samuel P. Siegel



### **CERTIFICATE OF SERVICE**

I certify that on February 14, 2019, I electronically filed the foregoing Reply in Support of Motion to Expedite with the Clerk of the Court of the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I certify that all other participants in this case, except for the Individual Plaintiffs, are registered CM/ECF users and that service of those parties will be accomplished by the appellate CM/ECF system. I further certify that counsel for the Individual Plaintiffs was served via U.S. Mail. A declaration of service to counsel for the Individual Plaintiffs is attached.

Dated: February 14, 2019

/s Samuel P. Siegel

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